

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF CONNECTICUT**

JOHN P. CURRY,	:	
Plaintiff,	:	
	:	
-vs-	:	Civil No. 3:02cv1149 (PCD)
	:	
ALLAN S. GOODMAN, INC.,	:	
Defendants.	:	

**RULING ON PLAINTIFF’S MOTION TO COMPEL INSPECTION OF PREMISES**

Plaintiff moves for an order compelling defendant’s compliance with his request to inspect its premises. For the reasons set forth herein, the motion is **granted in part**.

**I. BACKGROUND**

Plaintiff alleges that defendant terminated him in April, 2001, when it learned he had a chronic back injury. On February 26, 2003, plaintiff served defendant, a liquor distributor, with a Request for Inspection seeking to have an ergonomic expert inspect its warehouse to determine if accommodations for plaintiff’s alleged disability were feasible. On March 5, 2003, defendant responded seeking a more detailed explanation as to why the purported expert needed to inspect the warehouse. Defendant ultimately refused the request.

**II. DISCUSSION**

A party may serve on another party

a request . . . to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

FED. R. CIV. P. 34(a)(2). Such an inspection may be denied as unduly burdensome if “the degree to

which the proposed inspection will aid in the search for truth” outweighs “the burdens and dangers created by the inspection.” *New York Assoc. for Retarded Children v. Carey (Willowbrook)*, 706 F.2d 956, 961 (2d Cir. 1983) (internal quotation marks omitted).

Plaintiff argues that an on-site inspection is the only way his expert can truly evaluate defendant’s operation, and the disruption would be minimal. Defendant responds that it has provided a videotape of its warehouse operation, providing a picture of two “lines” at issue,<sup>1</sup> thus obviating the need for plaintiff’s expert to conduct an on-site visit, and that a visit would be disruptive to his twenty-four hour per day operation.

Consistent with Rule 34(a), defendant is not at liberty to refuse plaintiff’s request for an on-site visit and substitute what it deems comparable. This does not permit plaintiff’s expert “basic access to managerial personnel to understand the operations of the warehouse.” Such a request invokes concerns as to very danger raised in *Carey* that

interrogation of the employees, conducted informally could amount to a roving deposition, taken without notice, throughout the plants, of persons who were not sworn and whose testimony was not recorded, and without any right by the defendant to make any objection to the questions asked.

*New York Assoc. for Retarded Children*, 706 F.2d at 961 (internal quotation marks omitted).

Notwithstanding the marginal interference imposed on defendant’s operations, the request to inspect defendant’s premises is appropriate. The visit shall be limited to measurements and observations and is not to be treated as a hybrid visit/deposition. If plaintiff wants to question managerial personnel, questions will be presented through formal discovery mechanisms.

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<sup>1</sup> The parties cite to the work areas of interest as “split line” and “solid line”. It is presumed these represent separate assembly line operations within the warehouse.

### III. CONCLUSION

Plaintiff's motion to compel inspection of premises (Doc. No. 24) is **granted in part** as consistent with this opinion.

SO ORDERED.

Dated at New Haven, Connecticut, May \_\_\_, 2003.

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Peter C. Dorsey  
United States District Judge